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**From:** (b) (6) CIV USN SECNAV WASHINGTON DC (USA)  
**Sent:** Monday, October 28, 2019 11:24 AM  
**To:** (b) (6) CTR (USA)  
**Cc:** (b) (6) CIV USN ASSTSECNAV RDA DC (US); (b) (6) CTR (USA);  
(b) (6) CAPT USN ASSTSECNAV RDA DC (USA)  
**Subject:** FOIA REQUEST DON NAVY 2020-000355 --- Request for any Supplemental Policy/Guidance on "Review of Prices Proposed by TransDigm and Affiliated Companies"  
**Signed By:** (b) (6).mil

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I polled our Department of the Navy (USN and USMC) contracting activities and here is the supplementary guidance that we identified that the Department of the Navy has issued relating the TransDigm memo.

## **1. Headquarters/Department of the Navy/ DASN (Procurement)/DASN(P)]**

### **Policy Push (responsive part only)**

#### **“Memoranda**

Title: Review of Prices Proposed by TransDigm and Affiliated Companies

NMCARS change is not anticipated

Effective Date: June 14, 2019

Summary: DODIG, in report number DODIG-2019-060, found that TransDigm Group Inc. and its subsidiaries are engaging in a pervasive strategy of negotiating excessive profits on contracts with the Department for spare parts. A listing of TransDigm subsidiaries (as reported by TransDigm) is included in the memo. The IG report found that TransDigm is the only manufacturer of the majority of the spare parts the IG included in its review, putting TransDigm either in a sole source position or in a situation where it had the opportunity to set the market prices even for competitively awarded parts. Therefore, for all procurement actions not yet awarded as of the date of this memorandum, unless the prices agreed upon are based on adequate price competition or are set by law or regulation, contracting officers are directed to require the submission of uncertified cost or pricing data to support prices proposed by TransDigm and its subsidiaries. “Uncertified cost or pricing data” is used to mean “data other than certified cost or pricing data.” See the definition of “data other than certified cost or pricing data” at FAR 2.101.

Further details are available at:

[https://www.acq.osd.mil/dpap/policy/policyvault/Review\\_of\\_Prices\\_Proposed\\_by\\_TransDigm\\_and\\_Affiliated\\_Companies.pdf](https://www.acq.osd.mil/dpap/policy/policyvault/Review_of_Prices_Proposed_by_TransDigm_and_Affiliated_Companies.pdf).”

Posted at: [https://www.secnave.navy.mil/rda/DASN-AP/Pages/DASN\(AP\)-Policy-Push.aspx](https://www.secnave.navy.mil/rda/DASN-AP/Pages/DASN(AP)-Policy-Push.aspx)

## **2. Naval Air Systems Command (NAVAIR):**

### **COMMUNIQUE 19-10: Action Required when Reviewing Prices Proposed by TransDigm and Affiliated Companies**

#### **PURPOSE:**

This Communiqué provides direction to contracting officers/contract specialists on actions required when determining whether prices proposed by TransDigm and its subsidiaries are fair and reasonable. These actions are required in accordance with a memorandum from Defense Pricing and Contracting (DPC) issued as a result of the Department of Defense Inspector General's (DoDIG) Review of Parts Purchased from TransDigm Group, Inc.

#### **ACTION FOR CONTRACT SPECIALISTS AND CONTRACTING OFFICERS:**

1. For all procurement actions which include **TransDigm and/or its subsidiaries** not awarded as of 14 June 2019, contracting officers are directed to require the submission of uncertified cost or pricing data to support prices proposed by TransDigm and its subsidiaries unless the prices are based on adequate price competition (see below discussion of "rigged competitions") or are set by law or regulation. This does not preclude receipt of certified cost or pricing data in accordance with regulation.
2. In the event contracting officers/contract specialists have TransDigm or a TransDigm subsidiary as part of a procurement action (either as a prime or subcontractor), thoroughly document the methodology used for determining a fair and reasonable price in the Business Clearance Memorandum.
3. See the attached DPC memorandum, which lists the TransDigm subsidiaries. Review the list for companies affecting your programs and notify your appropriate chain of command for awareness if any of the companies are known contractors, subcontractors or offerors.

#### **BACKGROUND:**

In response to a congressional inquiry, the DoDIG conducted a review to determine whether the DoD purchased parts at fair and reasonable prices from TransDigm Group, Inc. The DoDIG found that TransDigm earned excess profit even though contracting officers followed the FAR and DFARS prescribed procedures for determining that prices are fair and reasonable. Contracting officers used historical price analysis, competition, and cost analysis to determine whether the prices proposed by TransDigm were fair and reasonable. The DoDIG review found that historical price analysis and competition were unreliable in identifying when TransDigm was charging excess profit because:

- prices for parts had become inflated over time;
- some parts appeared to be inflated at the time the Government first purchased the part;
- TransDigm was the only manufacturer at the time for the majority of the parts competitively awarded, giving TransDigm the opportunity to set the market price for those parts because the other competitors planned to buy the parts from TransDigm before selling them to the Government.

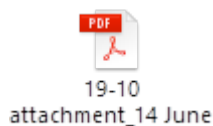
The DoDIG review states that performing cost analysis using certified or uncertified cost data is the most reliable way to determine whether a price is fair and reasonable. The single contract in the DoDIG

review sample found to be awarded with a reasonable profit was the only contract for which the contracting officer used cost data to determine price reasonableness.

In response to recommendations from the DoDIG in the review, DPC issued a memorandum on 14 June 2019 which provides direction to contracting officers to “require the submission of uncertified cost or pricing data to support prices proposed by TransDigm and its subsidiaries” when the competition is considered a “rigged competition”. DPC defined a “rigged competition” as a situation in which the sole manufacturer participating in a competition effectively controls the competition by its ability to establish the material pricing for all other offers. DoD does not consider such rigged competitions to be adequate price competition, based on independently submitted offers.

#### **ADDITIONAL INFORMATION:**

**Defense Pricing and Contracting (DPC) memo** dated 14 June 2019 is attached and includes a list of TransDigm subsidiaries.



**DoDIG Review of Parts Purchased From TransDigm Group, Inc.** dated 25 February 2019. Link: <https://media.defense.gov/2019/Feb/27/2002093922/-1/-1/1/DODIG-2019-060.PDF>

### **3. Naval Information Warfare Systems Command (NAVWAR):**

#### TransDigm and Affiliated Companies Price Proposals

Policy Alert 19-039

**Effective immediately, Contracting Officers** must require the submission of uncertified cost or pricing data to support prices proposed by TransDigm and its 150 subsidiaries if the agreed prices are not based on adequate price competition, or are not set by law or regulation. As set forth in Defense Pricing and Contracting (DPC) memorandum of June 14, 2019, the Department of Defense Inspector General (IG) found that TransDigm Group Inc. and its subsidiaries are engaging in a pervasive strategy of negotiating excessive profits on Department of Defense (DoD) contracts for spare parts.

Per FAR 15.403- 1 (c)(1), adequate price competition exists when two or more responsible offerors, competing independently, submit priced offers that meets the Government’s expressed requirement(s). However, the definition of adequate price competition does not address the fact that a sole manufacturer (such as TransDigm) participating in a competition can effectively control the competition by its ability to establish the material pricing for all other offerors. Therefore, based on independently submitted offers, DoD does not consider such rigged competitions to be adequate price competition.

This policy will remain in effect until the DPC memorandum is rescinded. The DPC memorandum sets forth further guidance, and provides a list of TransDigm subsidiaries.

#### 4. Naval Sea Systems Command (NAVSEA):

##### Review of Process Proposed by Transdigm and Affiliated Companies

“DPC memo (14 Jun 19) directs contracting officers to require the submission of “uncertified” cost or pricing data to support prices proposed by TransDigm and its subsidiaries. The term “uncertified” should be interpreted as “other than certified cost and pricing data” per FAR 15.403-3 and as clarified in DFARS PGI 215.403-3 (i.e., requiring PCO analysis of previous sales data on same or similar items). This direction applies to all procurement actions not yet awarded as of the date of the DPC memo, unless the prices agreed upon are based on adequate price competition or are set by law or regulation. This action results from the DoD IG report 2019-060, which found that TransDigm Group Inc. and its subsidiaries were engaging in a pervasive strategy of negotiating excessive profits on contracts with DoD for spare parts. A listing of TransDigm subsidiaries is included in the DPC memo that may be found here.” [not a public site]

VR,

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